

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number

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FOR COURT USE ONLY

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:
 VIVOMETRICS, INC.

CASE NO.: 09-bk-14307

Debtor(s).

NOTICE OF SALE OF ESTATE PROPERTY**Sale Date:** 3/17/10**Time:** 2:00 p.m.**Location:** U.S. Bankruptcy Court, Courtroom 201, 1415 State Street, Santa Barbara, CA 93101Type of Sale: ☒ Public☐ Private

Last date to file objections:

3/3/10Description of Property to be Sold: See Exhibit "A" attached hereto.Terms and Conditions of Sale: "As-is"; Free and clear of liensClosing is to occur 2nd calendar day after entry of final order of the Court approving the Sale.Initial Overbid of \$15,000 above Proposed Sale Price, with each subsequent bid in \$10,000 incrementsInitial Overbid of \$15,000 includes \$10,00 Break-Up FeeProposed Sale Price: \$585,000Overbid Procedure (If Any): See Exhibit "B" - Notice of Overbid Procedures appended hereto.Qualified Bids must be received by Debtor's counsel no later than 3:00 p.m. on March 12, 2010.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Ian S. Landsberg, Esq., Debtor's counselLandsberg & Associates, A Professional Law Corporation16030 Ventura Boulevard, Suite 470Encino, CA 91436; Tel: (818) 705-2777 Fax: (818) 705-3777Email: ilandsberg@landsberg-law.comDate: 2/24/10

EXHIBIT "A"

Description of Property to be Sold:

Debtor's assets, including intellectual property (know-how, patents, copyrights and trademarks), customer lists, FDA device registrations, inventory, equipment, domain names "www.lifeshirt.com" and "www.vivometrics.com", license agreements, personal property leasehold interests, goodwill and proprietary rights. Sale excludes all cash or cash equivalents, all preference or avoidance claims and actions of the Debtor, Debtor's rights under the Purchase Agreement and all cash and non-cash consideration payable or deliverable to the Debtor pursuant to the terms and conditions therein, insurance proceeds, claims and causes of action arising from or in connection with any unassigned contract or any item of tangible or intangible property not acquired by Purchaser and the Debtor's real property commercial lease.

EXHIBIT “B”

1 Ian S. Landsberg (SBN 137431)
2 Brigitte Gomelsky (SBN 255717)
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10 Attorneys for VivoMetrics, Inc.,
11 Debtor and Debtor in Possession

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13 **UNITED STATES BANKRUPTCY COURT**
14
15 **CENTRAL DISTRICT OF CALIFORNIA**
16
17 **NORTHERN DIVISION**

18 In re

19 VIVOMETRICS, INC.,

20 Debtor and Debtor in Possession.

) Case No. ND 09-bk-14307-RR

) Chapter 11

) **NOTICE OF SALE, OVERBID AND**
) **AUCTION PROCEDURES FOR THE**
) **SALE OF SUBSTANTIALLY ALL OF**
) **THE ESTATE'S ASSETS**

21 Hearing:

22 Date: March 17, 2010

23 Time: 2:00 p.m.

24 Place: Ctrm "201"

25 1415 State Street

26 Santa Barbara, CA 93101

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1 **TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES BANKRUPTCY JUDGE;**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE; THE TWENTY LARGEST**
3 **UNSECURED PARTIES; AND OTHER INTERESTED PARTIES:**

4 **PLEASE TAKE NOTICE** that the Court granted Debtor and Debtor in Possession
5 VivoMetrics, Inc.'s (the "Debtor") Motion For Order Establishing Procedures for the Sale of
6 Substantially All of the Estate's Assets (the "Sale Procedures") for the sale of substantially all of the
7 Debtor's assets, including intellectual property (know-how, patents, copyrights and trademarks),
8 customer lists, FDA device registrations, inventory, equipment, domain names "www.lifeshirt.com"
9 and "www.vivometrics.com", license agreements, personal property leasehold interests, goodwill
10 and proprietary rights (the "Assets").

11 **PLEASE TAKE FURTHER NOTICE** that the Court has set a hearing for approval of the
12 sale of the Assets for March 17, 2010 at 2:00 p.m. before the Honorable Robin L. Riblet, United
13 States Bankruptcy Judge, in Courtroom "201", of the United States Bankruptcy Court located at
14 1415 State Street,, Santa Barbara, California (the "Sale Hearing").

15 **PLEASE TAKE FURTHER NOTICE** that if Qualified Overbids are received from
16 Qualified Overbidders (as those terms are defined is below), the Debtor will conduct an auction for
17 a sale of the Assets (the "Auction") prior to the Sale Hearing. The Auction shall take place on
18 March 16, 2010 at 10:00 a.m. at the Canary Hotel located at 31 West Carrillo, Santa Barbara,
19 California 93101. The procedures to be followed at the Auction are set forth below (the "Auction
20 Procedures")

21 **PLEASE TAKE FURTHER NOTICE** that under the Sale Procedures, only Qualified
22 Overbidders may participate in the sale process. Qualified Overbidders are those prospective
23 bidders who submit a Qualified Overbid. A Qualified Overbid is a prospective bidder who, in
24 Debtor's sole discretion in conjunction with its counsel and investment banker Broadway Advisors,
25 LLC, satisfies the following:

26 (1) deliver to Debtor's counsel Ian S. Landsberg, Esq., whose address is in the upper left-
27 hand corner of this document, current financial statements or other financial information of the
28 bidder or its equity holder(s) demonstrating the bidder's financial capability to consummate the

1 proposed sale, as determined by the Debtor in its sole discretion;

2 (2) deliver to Debtor's counsel a letter confirming that bidder agrees to the terms and
3 conditions of the Purchase Agreement to be filed with the Court and that bidder will provide
4 Debtor's counsel with a signed asset purchase agreement in the event bidder's bid is successful

5 (3) the purchase price shall be in an amount of at least \$15,000 higher than \$500,000
6 (\$515,000);

7 (4) deliver to Debtor's counsel certified funds or wire transfer, in an amount of \$60,000 if
8 overbid is for all the Assets¹ ("Good Faith Deposit"), to be held in trust. The certified check shall
9 be made payable to "Landsberg & Associates Trust Account" and delivered to the attention of Ian
10 S. Landsberg, Esq. whose address is in the upper left-hand corner of this document. For wire
11 instructions, contact Ian S. Landsberg, Esq. directly for this information at (818) 705-2777.

12 (5) all of the foregoing **MUST** be received by Debtor's counsel before 3:00 p.m. on March
13 12, 2010.

14 **PLEASE TAKE FURTHER NOTICE** that by making a bid, a Qualified Overbidder shall
15 be deemed to have agreed to keep its offer open until the earlier of (x) two business days after the
16 Assets have been disposed of pursuant to the Sale Procedures, or (y) ten days after the Sale
17 Hearing.

18 **PLEASE TAKE FURTHER NOTICE** that any initial bid(s) or aggregate of initial bid(s)
19 submitted by a party or parties must be in an amount that results in additional consideration
20 (monetary or non-monetary equal in value) to the Debtor's estate (as compared to the consideration
21 offered by the Purchaser) of at least \$15,000 (the "Initial Overbid").

22 Any subsequent bids on the Assets as whole or the aggregate of any subsequent bids on less
23 than all the Assets submitted by a party or parties, whether by PTC Therapeutics, Inc. or any other
24 bidder, must be in increments of \$10,000 ("Subsequent Overbid Increments").

25 **PLEASE TAKE FURTHER NOTICE** that if Qualified Bids are received, the Debtor will
26 conduct an Auction for a sale of the Assets. Only a Qualified Overbidder who has submitted a

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28 ¹ Good faith deposit is in the amount of 10% of the overbid purchase price for separate lots of the Assets
(described in further detail below)

1 Qualified Bid will be eligible to participate at the Auction. At such Auction, PTC Therapeutics,
2 Inc. and Qualified Overbidders will be permitted to increase their bids. In the event there is at least
3 one Qualified Overbidder, the Debtor will conduct an Auction (i) with each successive overbid to
4 be at least \$10,000 higher than the previous bid, and (ii) setting any such additional procedural
5 rules that it determines to be reasonable under the circumstances for conducting the Auction. The
6 Assets may be sold as one or several lots at the discretion of the Debtor's investment banker
7 Broadway Advisors, LLC who will be conducting the Auction.

8 **PLEASE TAKE FURTHER NOTICE** upon conclusion of an Auction, Debtor
9 accompanied by Broadway Advisors shall (i) review each Qualified Bid on the basis of financial
10 and contractual terms and the factors relevant to the sale process, including those factors affecting
11 the speed and certainty of consummating the Sale and (ii) identify the highest and otherwise best
12 offer (the "Successful Bid"). At the Sale Hearing, Debtor shall present to the Bankruptcy Court for
13 approval the Successful Bid and any backup bids. Debtor may adopt rules for the bidding process
14 that are not inconsistent with any of the provisions of the Bankruptcy Code, any Bankruptcy Court
15 Order, or these Sale Procedures; and

16 **PLEASE TAKE FURTHER NOTICE** that following the Sale Hearing approving the sale
17 of the Assets to a Successful Bidder, if such Successful Bidder fails to consummate an approved
18 sale because of a breach or failure to perform on the part of such Successful Bidder, (a) it will
19 forfeit its Good Faith Deposit to the Debtor and the Debtor may pursue any and all of its options at
20 law and in equity with respect to such breach and (b) the next highest or otherwise best Qualified
21 Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid and the Debtor shall
22 be authorized to effectuate such sale without further order of the Bankruptcy Court or (c) Seller
23 may reschedule the Auction to a later date and time convenient to the Court.

24 **PLEASE TAKE FURTHER NOTICE** as part of the negotiations connected with the sale,
25 PTC Therapeutics, Inc. has insisted upon, in the event that it does not end up being the successful
26 purchaser of the Debtor's Assets and a sale is consummated to a third party, being compensated, at
27 least partially, for the substantial fees, costs and the expenditure of other resources it has incurred
28 ("Break-Up Fee"). The Break-Up Fee is \$10,000. The Initial Overbid of \$15,000 takes into

1 consideration the Break-Up Fee.

2 **PLEASE TAKE FURTHER NOTICE** that Debtor may conduct the Auction in all
3 respects in the manner that the Debtor determines will result in the highest, best or otherwise
4 financially superior offer(s) for the Assets, whether as a whole or in separate lots, provided that
5 such manner is not inconsistent with the provisions hereof or the Bankruptcy Code.

6 **PLEASE TAKE FURTHER NOTICE** the Debtor currently proposes to: (a) first, hold the
7 auction for all of the Assets, at which the Initial Overbid must bring in additional consideration to
8 the Debtor's estate (as compared to the purchase price offered by the Purchaser) of at least \$15,000,
9 and Subsequent Overbid Increments must be no less than \$10,000; (b) second, hold auctions for
10 separate lots of the Assets, such as, but not limited to, the intellectual property of the Debtor, the
11 tangible personal property of the Debtor (such as furniture and fixtures), inventory of the Debtor,
12 and intangible property, such as licenses and goodwill, ("Lot Bids" and the "Lot Bidding"). If the
13 aggregate of the highest bids obtained under the Lot Bidding exceeds the highest bid obtained for
14 the Assets as a whole, subject to the Overbid Protections described below, then the Debtor
15 proposes to seek bids for the Assets as a whole that exceed such aggregate, and so on.

16 At the Auction, the Debtor shall determine, in consultation with Broadway Advisors, which
17 bidder(s), be it the Purchaser or any overbidder(s), has submitted the highest and best bid(s) for the
18 Assets, either singly or in the aggregate, and such bidder(s) shall be deemed the Successful
19 Bidder(s) and such bid(s) the Successful Bid(s). Such Successful Bidder(s) shall complete and sign
20 all agreements, contracts, instruments or other documents evidencing and containing the terms and
21 conditions upon which such bid(s) were made. The Debtor shall then request at the Sale Hearing
22 that the Court approve the sale to the Successful Bidder(s) as determined by the Debtor, in
23 consultation with Broadway Advisors.

24 Dated: February 24, 2010

LANDSBERG & ASSOCIATES

25 */s/ Ian S. Landsberg*

26 _____
27 Ian S. Landsberg
28 Brigitte Gomelsky
Attorneys for VivoMetrics, Inc.